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SUBJECT: BANGLADESH'S NEW ATTORNEY GENERAL OUTLINES AGENDA:
BDR MUTINY, WAR CRIMES, AND INTERNATIONAL COOPERATION

REF: DHAKA 00120 AND 00280

Classified By: AMBASSADOR JAMES F. MORIARTY, REASONS 1.4(B) AND (D)

¶1. (C) New Attorney General (AG) Mahbubey Alam, a barrister in private practice, recently detailed how the GOB was considering three adjudicative approaches (standard trials, war crimes tribunals, and military courts martial) to deal with the Bangladesh Rifles (BDR) mutiny during a recent meeting with the Ambassador. During the meeting, the Ambassador encouraged the AG to work closely with the Embassy's Resident Legal Advisor (RLA) Office on various training initiatives and to support the establishment of the AG's Office as a permanent Bangladeshi Central Authority (CA) for purposes of international evidence gathering and asset recovery. Finally, the AG sketched out how proposed tribunals could be used for the first time to try persons accused of war crimes during the 1971 Liberation War.

Three Different Approaches to Adjudicate the BDR Incident

¶2. (C) Since the deaths of 55 officers during the mutiny at the BDR headquarters on February 25-26, the Bangladeshi media and legal community continue to speculate on the means by which the government could prosecute the accused in the BDR mutiny. During a meeting with the Ambassador, the AG detailed three ways this might occur. First, the Government of Bangladesh could seek to conduct standard trials in accordance with Bangladeshi criminal law and procedure. The Bangladeshi judicial system does not allow for jury trials; therefore the BDR matters would be conducted before a judge in sessions (trial) court. The decisions of the judge could be subject to appeal to the Bangladeshi Supreme Court (SC). The appeal would first be heard in the High Court (HC) Division of the SC and later in the higher appeals court or the SC's Appellate Division, if necessary.

¶3. (C) The second option would be to proceed before a special tribunal in accordance with International Crimes (Tribunals) Act of 1973 (Tribunals Act). The AG explained the Tribunals Act was consistent with other countries' tribunal laws, such as India's. A tribunal would include three current or retired SC judges. The Tribunals Act allows for immediate appeal to the SC Appellate Division. The AG admitted that no proceedings had ever occurred using the Tribunals Act. (NOTE: During a later meeting with the RLA Office, the Law Minister confirmed that no tribunals had been convened under the law to date.)

¶4. (C) The third option would be a court martial under the Army Act of 1952 (Army Act). Key steps in this military proceeding are the inquiry, the convening of courts martial with officers acting as judges, and the right of the convicted to appeal to the Army Chief of Staff. The AG's

Office has no role in this procedure.

¶5. (C) When the Ambassador inquired as to which of the three means would be employed by the GOB for the BDR mutiny, the AG said the Minister of Law would make that decision. (NOTE: To date, the GOB has made no official decision public. During a separate meeting with the RLA Office, however, the Law Minister spoke positively of the use of courts martial in the BDR case. He emphasized the relative speediness of that method in comparison with standard trials and war crimes tribunals.)

US Offers Mutual Legal Assistance Expertise

¶6. (C) Recent events in Bangladesh, including asset recovery in corruption cases, the war crimes cases, and the BDR mutiny, have highlighted the need for Bangladesh to obtain foreign assistance for its criminal cases. Since 2008, the RLA office has been working with the AG's Office to address this need. In March 2009, an expert from DOJ's Office of International Affairs arrived for a three-month assignment in the RLA's office to provide advice and technical assistance to GOB on mutual legal assistance (MLA), including international evidence-gathering for criminal cases and asset recovery and the establishment of a Bangladeshi Central

Authority (CA) for MLA.

¶7. (C) During his meeting with the AG, the Ambassador, accompanied by the RLA, introduced the DOJ expert and expressed US support for the establishment of a single CA for Bangladesh to handle MLA. The Ambassador and AG discussed a number of specific case examples highlighting the need for cooperation in the law enforcement arena and for the coordination of assistance. The AG requested assistance with asset recovery, anti-money laundering and anti-terrorist financing with the ultimate goal of bringing criminal proceeds back to Bangladesh.

War Crimes Tribunals

¶8. (C) The AG spoke at great length of the history underlying the proposed war crimes prosecutions, framing this issue as part of an ongoing battle between differing views of the world: secular liberalism versus religious extremism. He said the violent struggle for Bangladeshi independence had provided graphic examples of the terrible cost the struggle had imposed. When asked how the GOB would prosecute war crimes cases, the AG said that this issue, too, would be a decision made at the Law Minister's level. In the AG's view, positive aspects of possibly convening war crimes tribunals included using high-ranking, seasoned and respected judges to serve on the tribunals and convictions are appealable to the Appellate Division.

Follow up Meeting with the AG

¶9. (C) During a follow-up meeting with the RLA Office regarding CA development and other matters, the AG confirmed that the GOB would convene war crimes tribunals to adjudicate cases relating to the 1971 war of independence cases. When asked whether he thought the 1973 Tribunals Act was adequate under contemporary international standards, he demurred. When asked about media reports from earlier that day claiming that Bangladesh would seek evidence of war crimes from Pakistan and the United States, the AG responded that documentary evidence would be sought from the U.S., including newspaper clippings which are admissible in court under the Tribunals

Act.

Comment

¶10. (C) We are concerned about the new government's commitment to prosecute and adjudicate the BDR mutiny and the war crimes quickly, without more deliberation on the means of doing so. Comments by the AG and the Law Minister emphasized the political pressure to resolve both matters expeditiously.

The AG has minimized his office's role in the process, frequently deferring to the Law Minister. The AG sees the primary role of his office as limited to offering statutory advice to the GOB and conducting appeals cases on the government's behalf. If a war crimes tribunal or a standard criminal case is involved, the AG's Office will not be prosecuting the accused. The AG's Office may have a role if those cases are subject to judicial appeal. The AG's Office has no role to play if a case is conducted in accordance with courts martial procedures under the Army Act.

¶11. (C) The next step in the development of the mutual legal assistance initiative in Bangladesh will be an April 27th meeting of high-level GOB participants co-sponsored by the Law Ministry and the US Embassy. The gathering will provide an opportunity to gauge the new government's commitment to MLA, which appears to have waned in comparison to the commitment from the previous caretaker government. The meeting is also expected to demonstrate whether the new government will reinvigorate pending corruption-related asset recovery cases.

MORIARTY